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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE KING'S BENCH DIVISION OF THE HIGH COURT IN NORTHERN IRELAND (JUDICIAL REVIEW)

CHRISTOPHER CUMMINGS

Appellant

and

THE CORONER IN THE INQUEST INTO THE DEATH OF SEAMUS DILLON (DECEASED)

Respondent

Mr Jude Bunting KC with Mr Nick Scott (instructed by KRW Solicitors) for the Appellant
Mr Frank O'Donoghue KC with Mr Eugene McKenna (instructed by the Legacy Inquest Unit) for the Respondent
Ms Joanne Hannigan KC held a watching brief for the PSNI/Ministry of Defence

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Before: Keegan LCJ, McCloskey LJ and Scoffield J

KEEGAN LCJ (*delivering the judgment of the court)*

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Introduction

[1] This is an appeal from a decision of Fowler J ("the judge") of 17 April 2023 wherein he refused leave to apply for judicial review of a coronial decision. Fowler J heard the case as a "rolled up" matter and we have proceeded on the same basis. The coronial decision was made by His Honour Judge Greene KC, sitting as a coroner, to the effect that the appellant should not be afforded status as a properly interested person ("PIP") in the inquest ongoing before him. That inquest concerns the death of Seamus Patrick Dillon on 27 December 1997 outside the Glengannon Hotel in Cookstown, Co Tyrone.

[2] The background to the inquest requires only brief repetition given the discrete legal focus of this appeal. The appellant was shot and paralysed in the same gun attack as Mr Dillon, his co-worker and close friend. Both men were providing security as doormen outside the hotel on the night in question. It is common case and was well-known that both men had been convicted of scheduled offences and had served sentences for Republican paramilitary activity. Subject to the coroner's findings, the evidence presently suggests that around 11pm the appellant and the deceased were walking back towards the main hotel entrance when several loud bangs were heard. It appears on the night in question that Loyalist terrorists drove past the hotel in a car and opened fire on the appellant and Mr Dillon with a VZ58 automatic rifle. The appellant recalls waking up in the Royal Victoria Hospital. Whilst he survived this attack he sustained life changing injuries, is paraplegic and according to the medical evidence that we have seen has reduced life expectancy.

[3] The core of the case made by the deceased's next of kin is that those involved in the attack had been assisted by agents of the state and as a result whether the attack could have been prevented or pre-warning been given are live issues. Mr Cummings ("the appellant") makes common case with the next of kin of Mr Dillon. The judge at first instance in his judgment summarised the appellant's concerns as follows:

(i) The RUC did not give a warning to the Glengannon Hotel that evening, unlike other premises attended by Catholics, which may have been because the hotel was known to employ former Republican prisoners.

(ii) The car used in the attack had links to Loyalist paramilitaries and the police drove past it just after it had been stolen and failed to stop it.

(iii) There were serious investigative failings into the attack.

(iv) Recent reports indicate a link between the LVF and security services.

(v) The VZ58 rifle used in the attack was used in other attacks where collusion may have played a role.

[4] Within this factual matrix the appellant made an application with the benefit of junior counsel to the coroner to be afforded the status of a PIP. We have been referred to the substance of the application during this hearing. Without repeating all of the details we reference some salient aspects of the application as follows.

[5] Para [22] of the application reads as follows:

> "The applicant recognises that the grant of PIP status is discretionary. When exercising that discretion the coroner should have regard to the purpose of the inquest and the requirements of Article 2 ECHR."

[6] The gravamen of the application is found at para [28] which refers as follows:

> "At the very minimum the coroner should determine whether Article 2 is engaged in relation to him (Mr Cummings). The coroner can then separately determine whether he should be granted PIP status."

The Statutory Questions

[7] In Northern Ireland the statutory obligation upon a coroner conducting an inquest is in accordance with section 31 of the Coroners Act (Northern Ireland) 1959 to:

> "give, in the form prescribed by rules under section thirty-six, (his) verdict setting forth, so far as such particulars have been proved to (him), who the deceased person was and how, when and where he came to his death."

[8] Rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 is material in that it also provides that:

> "(the) proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely:- (a) *who the deceased was*; (b) *how, when and where the deceased came by his death*; (c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death." [emphasis added]

[9] In order to comply with the article 2 ECHR procedural obligation to carry out an effective official investigation into the circumstances of the death of the deceased "how" the deceased came by his death means not only that the coroner has the

obligation to investigate "by what means" but also to investigate "in what broad circumstances" the deceased came to his death: see *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182.

[10] The nature of the article 2 ECHR procedural obligation was considered by the ECtHR in *Jordan v UK* (2003) 37 EHRR 2 and in *Nachova & others v Bulgaria* (2006) 42 EHRR 43. It flows from these decisions that the essential purpose of an investigation is "to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility" and that the investigation is also to be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and the identification and punishment of those responsible. This is not an obligation of result, but of means. Furthermore, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.

[11] The applicability of article 2 requirements to the inquest relating to Mr Dillon is not controversial.

The rulings of the coroner

[12] In admirably concise parameters the coroner issued two rulings in relation to this application. The first ruling is dated 4 October 2022. In that the coroner summarises the application. He refers to one authority, *In Re Northern Ireland Human Rights Commission* [2000] NIQB 61. He refers to the fact that the appellant's representatives had submitted a short affidavit including the statement that he made to the RUC on 11 February 1998. The coroner also says that he has considered some recent inquests including the London Bombing, Hillsborough Football Stadium Disaster, Kingsmill and Colwell inquests.

[13] The core reasoning of the coroner is found from para [6] on as follows:

> "[6] As a witness, therefore, his contribution to the investigation, whilst important, is somewhat limited. It is my view that he is not at risk of any accusation of wrongdoing arising out of anything he has said in his statement or that this can be reasonably expected to arise as a result of any other statements or information presently available.
>
> [7] Further, there is no evidence available to me to suggest that he was a pre-planned target victim of the attackers. He does not fall into any of the categories identified in the list provided by Carswell LCJ in *Re Northern Ireland Human Rights Commission*, but I

recognise that category 6 calls for particular consideration, given the absence of a definition of properly interested person. Category 6 encompasses 'others at some special risk or appearing to the coroner to have a proper interest.'

…

[9] In my view, the circumstances in which a survivor victim could successfully argue for PIP status in an inquest are for the most part confined to circumstances where there is evidence that the survivor victim is to be the potential subject of criticism or where there is evidence that the death occurred in circumstances where he was an intended target. Neither of these circumstances pertain on the facts of this case.

[10] In consideration of the circumstances under which PIP status could be granted, I have looked also at whether Christopher Cummings' participation as a PIP could enhance the quality of the evidence in the inquest as a whole. I have not been made aware of any contribution Christopher Cummings could make to the inquest which could not be achieved and the inquest is presently intended to be formulated.

[11] The focus of a coroner's investigation must be on the circumstances of the death. To the extent that there is an overlap between the interests of both the family of the deceased and Christopher Cummings, those interests can be met by the grant of PIP status to the family of the deceased and there is no sustainable good reason to expand the range of PIPs to include those that were injured in the absence of any evidence tending to suggest that the survivor victim was in some way culpable for the death or an intended target for the attack.

[12] It is expected that Mr Cummings will attend the public hearings to hear the proceedings and give evidence. He can also continue to communicate with the coroner's office and liaise with my counsel. He may also liaise, should he so wish, with Mr Dillon's legal team of solicitor and counsel."

[14] Following this preliminary ruling there was a renewed application for PIP status raised by the appellant, again with the assistance of counsel. A legal argument

was filed by Mr Scott of counsel dated 17 October 2022. This argument reiterated the article 2 ECHR point which had previously been raised and says, inter alia:

> "However, it is incongruous for an individual whose circumstances do not engage article 2 to be granted PIP status in order to protect their rights yet someone, such as Mr Cummings, in relation to whom article 2 is engaged is not granted PIP status. It would be illogical to give an individual who engages article 2 the same status as an individual who does not engage article 2; even more so if an individual who engages article 2 is given a lesser form of participation than is available to allow their participation in the inquest ie through the grant of PIP status."

[15] The coroner's second ruling, dated 9 January 2023, is a brief synopsis of his consideration of the renewed application. In essence, the decision is against the appellant for the reasons contained in para [5] of that decision as follows:

> "[5] Christopher Cummings has no freestanding right to request that the inquest investigate the circumstances by which he came to suffer catastrophic injury. This is because the coroner's jurisdiction is limited, depending on the type of inquest to be heard, to establishing by what means or, alternatively, the broad circumstances by which a deceased died. While the means or circumstances by which a survivor came to be injured may overlap with the means or circumstances of the deceased's death, and to that extent be relevant to the task of the inquest, the inquiry that befell the survivor is not the focus of the inquest."

Arguments on appeal

[16] The skeleton argument of the appellant commendably focuses the argument on appeal to three points, namely that;

(a) The coroner erred in law, by failing to apply the test of whether the appellant has a proper interest;

(b) The coroner failed to have adequate regard to the fact that the appellant also has an article 2 right to an investigation; and

(c) The coroner made an irrational decision.

[17] The reply on behalf of the coroner effectively condenses into a contention that the proper interest of the person must be a proper interest in the proceedings investigating *the death* of the deceased, i.e. the inquest, as opposed to an interest in *the events* that gave rise to death of the deceased. This is because the inquest can only deal with answering the four statutory questions relating to the deceased and his death and because the coroner has no jurisdiction to conduct a parallel investigation or inquiry.

[18] The coroner's submission is that the approach of the judge at first instance should be upheld. He considered that the issue of PIP status was at the end of the day a matter in which a wide margin of discretion was vested in the coroner and each case was fact specific. Ultimately, the coroner's submissions through counsel are that the decision to decline PIP status was very carefully considered by the coroner and it cannot be said that he failed to take any relevant matter sufficiently into account or that he took into account an irrelevant matter or that his decision was otherwise unlawful. Within the body of the coroner's skeleton argument a further point is raised that it is, of course, open to the coroner to keep the issue of PIP status under review and if evidence or intelligence emerges in the course of the inquest necessitating a reconsideration of this issue undoubtedly this will occur.

Current Position

[19] The inquest itself has started in modular format. Three days of evidence were heard from 17 April 2023. It is now paused pending a public interest immunity ("PII") process which will take until January 2024. We were told that the case will return to the coroner's court on 8 September 2023 when further matters will be considered and the draft scope document which has been circulated by coroner's counsel dated 22 February 2023 will be further debated. The opportunity arises at this point to comment briefly on the scope document which counsel were at pains to point out is not agreed and which the Ministry of Defence ("MoD")/PSNI would take some issue with. It is instructive to look at para [3] of the draft scope document which relates to the "how" question pertaining to this death, in addressing in what circumstances the deceased suffered from the fatal injuries from which he died.

[20] Within that section of the scope document reference is made to the coroner needing to examine:

> "The knowledge, if any, of any member of the RUC and/or MOD of any of the following facts connected to the death of the deceased:
>
> - The identity (ciphered if deemed necessary by the Coroner) of any person responsible for the carrying or firing of a firearm or firearms at the deceased on the 27th December 1997.

- The identify (ciphered if deemed necessary by the Coroner) of any accomplice of any such person identified above.

- The circumstances by which those responsible for carrying, firing or aiding and abetting the firing of any firearm at the deceased on the 27th December 1997 came to be in possession of the Vauxhall Nova IIW 1872 or any firearm or firearms in their possession at the time of the shooting.

- The status of any person connected to the shooting of the deceased insofar as they may be an agent or informer of either the RUC or MOD.

- The knowledge of any member, servant or agent of the RUC or MOD as to location, whereabouts or holding of any firearm connected with or used in the shooting of the deceased.

- The knowledge of any member, servant or agent of the RUC or MOD as to the acquisition and use of a Vauxhall Nova IIW 1872.

- The knowledge and means of knowledge, whether by access to information from intelligence or otherwise available to the RUC and/or MOD as to the location of any relevant firearm, the acquisition of the Vauxhall Nova IIW 1872, the planning of the attack on the Glengannon Hotel by those responsible for the shooting of the deceased, the route taken by the Vauxhall Nova IIW 1872 both prior to and immediately following the shooting of the deceased at the Glengannon Hotel on the 27th December 1997 and the identity of those responsible.

- The manner by which the death of the deceased and the identification of those responsible was investigated by the RUC.

- The flow of information from those with knowledge of facts and circumstances relevant to the investigation to those tasked with the investigation into the circumstances of the death of the deceased.

- The circumstances by which firearm/s used in the attack upon the Glengannon Hotel were used to shoot at other persons in Northern Ireland on other occasions and, how, if at all, the circumstances of the use of those firearms assists in establishing any facts relevant to the death of the deceased.

- The policing activities in the general area of the Glengannon Hotel on or about the 27th December 1997, including the use of checkpoints, surveillance and the issuing of warnings.

- Evidence of sightings by either the RUC or MOD from any relevant vantage or other point relevant to the shooting of the deceased."

The coronial framework in Northern Ireland

[21] The governing legal rules are the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ("the 1963 Rules"). For the purposes of this analysis the relevant rule is rule 7 which reads as follows:

> "(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who in the opinion of the coroner is a properly interested person shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor, provided that the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.
>
> (2) If the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease, any person appointed by a trade union to which the deceased at the time of his death belonged shall be deemed to be a properly interested person for the purpose of this Rule."

[22] The effect of the aforementioned rule is that only one type of PIP is prescribed, namely an appointed trade union representative in the case of an inquest examining the death of someone which may have been caused by an injury received in the course of employment or an industrial disease. In every other case the coroner must make a specific assessment and determination.

[23] Clearly rule 7(1) requires the coroner to make determinations about PIP status. This being a statutory provision the starting point for the coroner is to correctly construe its terms. This is a relatively straightforward exercise. The words "properly interested person" are ordinary words which do not attract any special or unusual meaning. The word "interest" requires no elaboration. "Interest" is qualified by "properly." "Properly" is clearly designed to add a qualification of substance. It is clear that a remote, flimsy or peripheral interest will not suffice. Furthermore, the "interest" must relate to the inquest proceedings and their outcome.

[24] *Coroners' Law and Practice In Northern Ireland (*Leckey and Greer, SLS, 1998), the main legal text in Northern Ireland in this area, explains this rule in the following terms, at para 7-33:

> "The term "properly interested person" is not otherwise specifically defined in the 1959 Act or the 1963 Rules; but coronial practice in Northern Ireland has been to regard persons falling into the following categories as "properly interested" in the inquest:
>
> (1) the next of kin of the deceased;
>
> (2) the executor(s) of the deceased's will or persons appointed as the deceased's personal representative;
>
> (3) solicitors acting for the next of kin;
>
> (4) insurers with a relevant interest;
>
> (5) anyone who may, in some way, be responsible for the death;
>
> (6) others at some special risk or appearing to the coroner to have a proper interest."

[25] The effective guidance to be derived from this text is as follows. Firstly, the text deals with "coronial practice." This is a matter of some importance. Equally important is the observation which follows, namely that the list is not designed to be "exhaustive." There are two considerations which must be emphasised. The first is that the list merely provides illustrations of rule 7(1) determinations in individual cases. It provides no indication of the fact sensitive or context sensitive feature of cases in which persons of the kind listed have had PIP status conferred. The list is merely illustrative. Second, in a given case a person who falls within one of the six categories will not automatically acquire PIP status. This is so because (a) mere illustrations are not to be equated with rigid legal rules or categories and (b) the

coroner must undertake the necessary exercise afresh and unfettered in every case. We would add that although the list must be viewed in this way, this is not to devalue its practical utility to coroners in making rule 7(1) determinations.

[26] In what may be described as obiter comments Carswell LJ in *Re NI Human Rights Commission* suggested that PIP status could be established in the following cases:

(a) If a direct family relationship is established to the deceased.

(b) Representatives of the deceased or of the family of the deceased.

(c) Those who may have a financial interest in ascertaining the cause of the death of the deceased (for example, an insurer where suicide is suspected thus voiding a policy of life insurance).

(d) Representatives of those who may bear a degree of culpability for causing the death of the deceased (insurers of a motorist involved in a fatal collision or an employer of a deceased person).

[27] The current Northern Ireland Legacy Inquest Case Management Protocol at para [14] states as follows:

> "14. Decisions on the status of a Properly Interested Person will be taken by the Coroner at as early a stage of the inquest process as possible. Anyone seeking designation as a Properly Interested Person shall make an application in writing to the Coroner, unless the Coroner is satisfied it is not necessary to do so. The application shall set out the applicant's proper interest in the inquest; any risk of criticism it is said that they may face as a result of the inquest proceedings; any direct or significant role they are said to have played in the matters relating to the death of the individual or other matters within the provisional scope of the inquest; or any other significant interest they have in the inquest."

Comparative law from England & Wales

[28] A comparison with the coronial framework in England and Wales has been raised in this case and is relevant to some extent: with the health warning that the wording of the English statutory provisions differ from rule 7 and the law has substantially changed in that jurisdiction. In particular, the Coroners Rules from 1984 which are referred to in various authorities we will now discuss have lapsed on the repeal of the Coroners Act 1988 by the Coroners and Justice Act 2009.

[29] Section 47 of the Coroners and Justice Act 2009 defines "interested person" (not "properly interested person") in the coronial world in a comprehensive manner as follows:

> "(2) "Interested person", in relation to a deceased person or an investigation or inquest under this Part into a person's death, means—
>
> (a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;
>
> (b) a personal representative of the deceased;
>
> (c) a medical examiner exercising functions in relation to the death of the deceased;
>
> (d) a beneficiary under a policy of insurance issued on the life of the deceased;
>
> (e) the insurer who issued such a policy of insurance;
>
> (f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so."

[30] Further reference is made in the legislation from (g)-(l) to include within the category of permitted "interested persons", inter alia, a Chief Constable, a Provost Marshall, a Director of the Independent Office for Police Conduct, or a person appointed by a Government department.

[31] There is a catch-all provision at (m) which refers to "any other person who the senior coroner thinks has a sufficient interest." For present purposes there are further sections of this rule which we need not replicate here. The Chief Coroner's Guide to the Coroners and Justice Act 2009 summarises the position at paras 60 and 61:

> "60. Section 47 of the 2009 Act lists those who come within the definition of the term "interested person." This expands slightly the list of "interested persons" in rule 20(2) of the 1984 Rules and is intended to capture, for example, the role of the Independent Police Complaints Commission in conducting and managing some investigations. In addition to the specific list of those that fall into the category of "interested person", there is

> power for the coroner to determine that any other person is an interested person.
>
> 61. It is not intended that the coroner has to contact all family members listed in section 47(2)(a). In practice the coroner needs one point of contact with the family (or occasionally more than one when the family is divided) and any other interested persons that have made themselves known to the coroner."

[32] The appellant's argument focused on several cases which examined the previous 1984 Rules. The first is the case of *R v Coroner for the Southern District of Greater London ex parte Driscoll* [1993] 159 JP 45. This was a Divisional Court case which considered the meaning of "properly interested party" under the then prevailing statutory provision, rule 20(2)(h) of the Coroners Rules 1984. The issue arose because the applicants were the sisters of the deceased who had been shot by police officers following a siege. They had been in contact with the deceased on the day of his death. Rule 22(4) of the Coroners Rules 1984 stated that a coroner could include as a properly interested party "any other person who, in the opinion of the coroner, is a properly interested person."

[33] The English model in force when *Driscoll* was decided differs markedly from its Northern Irish counterpart. It prescribed in some detail those who qualified for the right in question, namely the right "… to examine any witness at an inquest either in person or by counsel or solicitor." If a person satisfied the coroner that they fell within any of categories (a)–(g) the coroner was obliged to accord them this right ("shall be entitled ..."). This rule, in common with the Northern Irish rule, provided no definition of "properly interested person." Pill LJ suggested that categories (a)-(g) provided a "guide" to the kind of interest embraced by category (h).

[34] At this point we stress the obvious fact that coroners in this jurisdiction must be alert to the different statutory language of any of the equivalent English provisions, repealed or current. They will derive little or no assistance from having recourse to that provision.

[35] In *Driscoll* the English Divisional Court expressly declined any attempt to provide an exhaustive definition of the words "properly interested person." We concur with this approach. In a ruling in the Coroners Inquests into the London Bombings of 7 July 2005, Hallett LJ gave consideration to *inter alia* the former English provision, rule 20(2)(h). At paras [120]–[121] Hallett LJ firstly quoted with approval the passages in *Driscoll* considered below. She then reproduced para [32] of the judgment of Lord Woolf in *Re Northern Ireland Human Rights Commission* [2002] UKHL 25. As this decision was concerned with the meaning of a different statutory provision, namely section 68 of the Northern Ireland Act 1998, we consider that it does not speak to the question of how rule 7 should be either construed or applied.

[36] In *Driscoll* Kennedy LJ, delivering the leading judgment of the court, expressed the view that it would be "reasonable to conclude that close bond relations of a deceased who were in contact with him immediately before he died would have a genuine and proper interest in participating in the process of ascertaining how he died." He added:

> "The words properly interested person are ordinary English words to which the coroner must be allowed to give an ordinary meaning. It was doubtful that the definition of a properly interested person was the same as the test for standing at judicial review. In forming his opinion for the purposes of the rule, the coroner has simply "got to look at the rule as a whole and at the circumstances of the instant case …
>
> A properly interested person must establish more than idle curiosity. The mere fact of being a witness will rarely be enough. What must be shown is that the person has a genuine desire to participate more than by the mere giving of relevant evidence in the determination of how, when and where the deceased came by his death."

[37] In a concurring judgment Pill LJ expanded on the concept of "properly interested person" in the following terms:

> "It imports not only the notion that the interest must be reasonable and substantial, and not trivial or contrived, but in my judgment also the notion that the coroner may need to be satisfied that the concern of the person seeking to intervene is one genuinely directed to the scope of an inquest as defined in rule 36."

This court concurs with each of the immediately preceding passages.

[38] The other authority which has been relied on, again dealing with the 1984 Rules and specifically rule 20(2)(h), is *R (Platts) v HM Coroner for South Yorkshire (East District)* [2008] EWHC 2502. In this case one of the issues was whether the claimant, who had ended a relationship with the deceased soon before his death, could be a properly interested person under the rule. Overall, it was suggested that the deceased had a very close connection with the claimant and that given his behaviour the foreseeable outcome was such as to make her a properly interested person. The decision in the case given by Wilkie J found that the claimant's interest was reasonable and substantial, not trivial or contrived. He found that her wish to participate in the inquest was genuine and directed a proper motive – namely questioning whether the system had let down the deceased. Therefore, the only

reasonable conclusion in that case, it was held, was that the claimant did fall within rule 20(2)(h) and was therefore a properly interested person.

Consideration

[39] Having examined the relevant rules and highlighted the statutory language which is in issue we return to the substance of the case. First, another brief mention of article 2 obligations is appropriate. At para [20] of *Middleton* the House of Lords decided that to meet the procedural requirement of article 2 an inquest should ordinarily determine, however briefly, the disputed factual issues at the heart of the case and that (as noted above) how the deceased came by his death should be interpreted to mean not simply by what means but in the broader sense of by what means and in what circumstances. The well-known articulation of this test is found in *R (Amin) v Secretary of State of the Home Department* [2004] 1 AC 653 where at para [31] Lord Bingham also said this:

> "The purpose of such an investigation (article 2) are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

[40] Next, we return to the statutory language which is core to any consideration of this case. An important feature of the relevant rule, rule 7(1), which must be addressed concerns the words "in the opinion of." The use of these words is a familiar statutory device. This device engages an equally familiar public law framework. Thus, in the exercise of forming the requisite opinion the coroner must take into account all material facts and considerations, must disregard the immaterial and must not lapse into *Wednesbury* irrationality. Furthermore, the decision must not be contaminated by bias, whether actual or apparent. The decision must in addition be the product of a procedurally fair decision-making process. Fundamentally, the decision must be in accordance with and in furtherance of the broader framework of legal rules and principles governing the conduct of inquests in Northern Ireland (the "Padfield" principle). This is the overarching touchstone in every case.

[41] Furthermore, the words "*in the opinion of*" are the classic language of public law. No person has a <u>right</u> to conferral of PIP status under rule 7(1), in contrast to the limited provision made by rule 7(2). Rather, the question of whether such status should be conferred is determined by the coroner forming the requisite opinion. A <u>right</u> arises only if the outcome of this exercise is to confer PIP status. In such event the person concerned has an express right to examine any witness. Certain other

rights ancillary to the right to examine witnesses, for example the right to disclosure of documents and to make submissions on the evidence, are also by now well established, subject to argument in individual cases.

[42] The preceding analysis illuminates the reluctance expressed by Kennedy LJ in *Driscoll* at page 9:

> "Of course this court will be very slow to interfere with a coroner's expression of opinion as to who is a properly interested person … but when it is apparent that in forming that opinion a coroner has taken irrelevant matters into account and so has reached a conclusion at which no reasonable coroner properly instructing himself could have arrived then his decision cannot stand."

While we agree with this passage, we would add the important rider that Kennedy LJ instanced only one of the possible public law misdemeanours which could infect a coroner's PIP ruling. The others are rehearsed above.

[43] The next feature of rule 7 which must be highlighted is the absence of any prescription of the considerations which a coroner must take into account in forming the requisite opinion. The principle thus engaged, again belonging to the public law framework outlined above, was formulated by Lord Scarman in *Re Findlay* [1985] AC 318, at 333h – 334c, in these terms. The court intervenes on judicial review:

> "… when the statute expressly **or impliedly** identifies considerations required to be taken into account by the authority **as a matter of legal obligation."**
>
> [emphasis added]

See also *R (Hurst) v London Northern District Coroner* [2007] UKHL 13 at [57], per Lord Brown; and *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60 at [40], per Lord Bingham. The principles are summarised in De Smith's Judicial Review, 15th ed at para 11-029:

> "As we have seen in Chapter 5, the question of what is a relevant or material consideration is a question of law, whereas the question of what weight to be given to it is a matter for the decision-maker. However, where undue weight is given to any particular consideration, this may result in the decision being held to be unreasonable, and therefore unlawful, because manifestly excessive or manifestly inadequate weight has been accorded to a relevant consideration."

Furthermore, it is orthodox dogma that material and immaterial considerations are supplemented by a third category, namely considerations which the decision maker may permissibly take into account in the exercise of their discretion

[44] In every case where a decision falls to be made by a coroner under rule 7(1) an awareness of the broader framework of legal rules and principles governing inquest proceedings in Northern Ireland is essential. Resort to this framework will provide the coroner with the surest guide to identifying considerations which the statutory words require by implication to be taken into account. It must be emphasised that the material considerations will vary according to the context.

[45] The foregoing analysis paves the way to this court's final observation about rule 7(1). Every case requiring a determination under this provision will be unavoidably fact sensitive and context sensitive. Thus, it will be rare for a coroner to derive assistance from rulings made in previous cases. Such rulings do not have precedent status and practitioners should rarely base applications and submissions on them.

[46] Finally, we assess the parties' arguments within the public law context in which they arise, applying the public law principles which we have discussed herein. Having done so we discern no public law error for the following reasons. First, there is no suggestion that the coroner failed to have regard to the statutory words. Fundamentally, it seems to us that he asked the relevant question. Second, we can detect no misdirection in law. Third, the main considerations which he took into account – that the appellant would not be implicated in any way in the verdict, was not considered to be the specific intended target and would predictably provide no added value of substance to the evidence to be received (over and above his contribution as a witness) were plainly material, in the sense explained above. Fourth, he left no material consideration out of account. Fifth, no semblance of irrationality is discernible in his determination. Sixth, no fetter of discretion (insofar as this is an appropriate species of challenge to a rule 7(1) determination) has been established: the coroner employed the language of "for the most part" (see para [9] of his ruling quoted at para [13] above).

[47] In this case there is no dispute that article 2 is engaged as regards Mr Dillon and that this inquest is the vehicle for satisfaction of the state obligation in relation to him. This inquest is not the vehicle for discharging any state obligation, under article 2 or otherwise, to inquire into the injuries sustained by the appellant. It is not designed to fulfil this purpose. Its fundamental purpose is to inquire into the death of Mr Dillon.

[48] The appellant was injured, seriously so, in the attack which ended the life of Mr Dillon. His quest to secure PIP status hangs on this basic fact. Properly analysed, from the perspective of rule 7(1) it has no other material feature. The aforementioned nexus, one of coincidence of experience, falls measurably short of

establishing a case for PIP status. The coroner's conclusion to this effect is in the opinion of this court unimpeachable.

[49] Notwithstanding the foregoing conclusions we reiterate the fact that the appellant obviously has an important part to play in the inquest. He provided a statement to the police in 1998. He wishes to give evidence and, as the coroner says, he should be informed throughout the inquest process of relevant evidence. It is apposite at this point to note that the scope of this inquest remains to be finally determined. This inquest is at an early stage and, as Mr O'Donoghue has frankly conceded, it may well be the case that a renewed application by the appellant for PIP status may be made when matters become clearer due to the dissemination of evidence. We can say nothing about the merit of such a renewed application, save that these matters should always be kept under review in coroners' inquests and no doubt if there are changed circumstances or a reason for a new PIP assessment the coroner will consider them.

Conclusion

[50] We are in broad agreement with the coroner's ruling and the judgment of Fowler J for the reasons elaborated above. From those we distil the following guiding principles:

(i) The grant of properly interested person status is pre-eminently a discretionary exercise. The outcome of every application will depend upon the facts of the particular case.

(ii) The question may arise upon application but also at the coroner's own discretion given that this is an inquisitorial process.

(iii) The task of the coroner is to form the requisite statutory opinion in accordance with the legal principles identified in this judgment.

(iv) The determination of this question will, in every case, be undertaken in accordance with the framework of public law traced in this judgment.

(v) If PIP status is granted that leads to a person being entitled to representation and, as a general rule, being able to question witnesses through legal representatives.

(vi) The purpose of an inquest is statutory. The inquest must, in any circumstance, deal with the statutory questions, namely when, how and where a deceased came to his death.

[51] Finally, as the coroner's counsel stressed during this hearing before us, the issue of PIP status like other issues in an inquest is subject to ongoing review. The coroner's decision was provided at a point in time on the information then available

to him. It remains to be seen if the provision of disclosure after the PII process or any other factor may alter the landscape.

[52] Overall, and for the reasons we have given, we consider that the coroner's decision to refuse PIP status to the appellant is unimpeachable. Indeed, while that outcome was inevitable on the facts of this case and in light of the limited basis upon which the application was advanced (namely Mr Cummings' own article 2 rights), this court has identified no merit in the further grounds advanced by counsel at first instance and on appeal.

[53] Having had the benefit of further argument on the point this court considers that the threshold for leave to apply for judicial review is surmounted. However, the case must fail on its merits for the reasons we have given. The appeal will therefore be dismissed.